

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

ELWOOD H. JONES, JR.,

Petitioner,

-vs-

MARGARET BAGLEY, Warden,

Respondent.

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Case No. 1:01-cv-564

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District Judge Thomas M. Rose  
Chief Magistrate Judge Michael R. Merz

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**ORDER REGARDING RESPONDENT'S MOTION FOR DISCOVERY**

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This capital habeas corpus case is before the Court on Respondent's Motion for Appropriate Relief (Doc. No. 94) which seeks discovery of those portions of the files of Petitioner's trial and appellate counsel which relate to the claims of ineffective assistance of those counsel on which the Court has granted an evidentiary hearing.

Although most of the jurisprudence developed on discovery in habeas corpus cases has related to discovery by petitioners, Rule 6 of the Rules Governing § 2254 Cases requires any party seeking discovery in a habeas case to show good cause. Because the Court has granted an evidentiary hearing at which the attorneys in question will be called as witnesses by Petitioner, the Respondent has shown good cause for the requested discovery, to wit, that the documents sought are reasonably likely to be relevant to the testimony to be expected from these witnesses.

Respondent relates that Petitioner's counsel have declined to produce the documents without a court order, but has not advised on what basis Petitioner's counsel have made that refusal. To the

extent that the objection has been based on the prior lack of a finding of good cause, that objection is overruled. If there are other objections, Petitioner shall raise them in his memorandum in opposition which shall be filed within the time allowed by S. D. Ohio Civ. R. 7.2. If the objections are based on any asserted privilege, Petitioner's counsel shall produce, not later than the date on which the memorandum in opposition is filed, a privilege log which provides enough to detail to permit adjudication of the claim and shall also produce the documents withheld under claim of privilege for in camera inspection by the Court.

March 9, 2007.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge